IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1227 OF 2007

C. A. Seetharaman ..Petitioner

versus

The Simplex Mills Co. Ltd. ..Respondents

Mr. M. D. Nagle for the Petitioner.

Mr. Kiran Bapat i/b. M/s. Desai & Desai & Associates for the Respondents.

CORAM : D.B. BHOSALE, J.
DATE : 18TH JULY, 2007.

P.C.

1. Heard learned counsel for the parties.

2. This Petition under Article 226 of the Constitution is directed against the Judgment and Order rendered by the Industrial Court in an Appeal bearing No. 43 of 2004 by which the Petitioner's Appeal has been dismissed and the Judgment and Order dated 8.12.2003 passed by the 8th Labour Court, Mumbai, in Application (BIR) No. 225 of 1993 has been affirmed. The application was instituted by the petitioner under Section 42 read with Sections

78 and 79 of the Bombay Industrial Relations Act, 1946 against the order of his termination issued by the Respondent - Company.

3. Mr. M. D. Nagle, learned counsel for the Petitioner assailed the Judgements of the Courts below on two grounds. Firstly, that an issue of fairness of the enquiry conducted against the Petitioner had not been framed and considered by the Authorities below, and, secondly, there is sufficient material on record to hold that the services of the Petitioner were terminated by the Respondents with effect from 8.10.1993 and that he had sent a letter of approach within three months therefrom as required under Section 42 of the Act.

4. So far as the first contention is concerned, at the outset, I observe that this contention was not raised by the Petitioner at any stage prior to filing of this Writ Petition. As a matter of fact, he did not challenge the domestic enquiry and termination of his service with effect from 18.2.1994 as claimed by the Respondent - employer. The Courts below have concurrently held that the Petitioner was terminated after following the due

procedure and conducting the domestic enquiry from 18.2.1994. In view thereof, first contention of Mr. Nagle must be rejected. The Judgment of the High Court of Delhi relied upon by him in support of this contention in **UCO Bank vs. Presiding Officer (2000-I-LLJ 1187),** in view of the peculiar facts and circumstances of this case, is of no avail to the Petitioner.

5. In so far as the second contention of Mr. Nagle is concerned, he placed reliance upon a letter dated 4th October, 1997 wherein according to the Petitioner, the Respondent - Employer had admitted that the services of the Petitioner were terminated from 8.10.1993. This letter had not been admitted by the Respondents - Employer. It is pertinent to note that when a signatory of the letter was examined by the Employer, no case was put to him stating that the said letter was written by him. In fact, he has clearly stated that he does not know any such letter was ever sent. For the reasons stated in paragraphs 8, 9 and 10 in the Judgment of the Industrial Court, I find no merit in this submissions. In the circumstances, this petition is dismissed.

(D. B. BHOSALE, J.)